

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**PALMER DONAVIN MANUFACTURING CO., AND
P-D MIDWEST TRANSPORT, INC.¹**

Employer

and

Case No. 8-RC-16282

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 377, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ²the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

¹ The Employer names appear as amended at hearing.

² The Petitioner submitted a timely post-hearing brief which has been duly considered.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers and warehouse employees employed by Palmer Donavin Manufacturing Co. and P-D Midwest Transport, Inc. at the facility located at 1400 Front Street, Warren, Ohio excluding all clerical employees, sales employees, professional employees guards and supervisors as defined in the Act.³

Palmer Donavin Manufacturing Co., hereinafter referred to as Palmer Donavin, is an Ohio corporation engaged in the operation of a distributing business with a facility located at 1400 Front Street, Warren, Ohio, the only location involved herein. P-D Midwest Transport, Inc, hereinafter referred to as P-D, is an Ohio corporation engaged in the interstate transportation of goods with a facility located at 1400 Front Street, Warren, Ohio, the only location involved herein. There are approximately 18 employees in the unit found appropriate herein.

The Petitioner contends that a single unit is appropriate because the Employers are joint and/or single employers with functionally integrated operations, centralized control of labor relations, common management and common ownership and control. The Employers contend that they are separate companies and are not a joint and/or single employer. The Employers argue that even if found to be a joint employer, they do not agree to joint employer status for negotiation purposes and, therefore, a single unit made up of employees of both employers is not appropriate.

Record testimony establishes that the following individuals hold the positions at Palmer Donavin set forth opposite their names:

Ron Calhoun	- president and chief operating officer, member of board of directors
Robyn Polina	- vice president of finance, corporate secretary and treasurer
Robert McCollow	- vice president of operations
David Zimmerman	- vice president of sales

³ The unit is in substance accord with the petitioned for unit as amended at the hearing.

Eric Belke	-	- vice president kitchen cabinet division
Jerry Minor		- vice president marketing
Robert Woodward, Jr.		- chairman, board of directors
Jim Wiles		- member, board of directors
Glen Corlett		- member, board of directors

Record testimony reveals that the following individuals occupy the position at P-D set forth opposite their names;

Ron Calhoun	- president, member board of directors
Robyn Pollina	- treasurer, member board of directors
Robert McCollow	- secretary, member, board of directors

The record establishes that Palmer Donavin and P-D operate from the same facility and share the same telephone number.

Palmer Donavin is a wholesaler of building materials and HVAC products. It warehouses products received from various manufacturers for later sale and delivery to customers. At the time of the hearing, there were approximately 11 warehouse employees at the Warren facility. The warehouse employees perform shipping and receiving functions, pull orders, load trucks and put together driver manifests. Warehouse employees work on one of three shifts: 8:00 a.m. to 4:30 p.m.; 8:30 a.m. to 5:00 p.m. and 9:30 p.m. to 6:00 a.m.

P-D, a wholly owned subsidiary of Palmer Donavin, delivers products to various Palmer customers. P- D performs both local and over-the-road delivery work for Palmer Donavin, which is its only customer. At the time of the hearing, there were approximately 7 drivers working at the Warren location.

The drivers are hired, fired and supervised by branch manager Matt Dierienger, who is employed by Palmer Donavin. The record establishes that P-D does not employ any supervisors. According to Calhoun's testimony, Matt Dierienger also serves as Palmer Donavin's operations manager and, as such, is responsible for hiring, firing and disciplining warehouse employees. In addition, Jeff Clutter serves as the day shift supervisor and Scott Herschberg as the midnight shift supervisor in the warehouse. Herschberg is also the driver's dispatcher at the Warren

facility. Testimony established that Herschberg establishes truck routes and decides which driver will be assigned to each route.

Calhoun testified that by virtue of his various positions, he has overall responsibility for the operations at Palmer Donavin and P-D. Calhoun is ultimately responsible for human relations and personnel at Palmer Donavin. Sean Richards is the Palmer Donavin Human Resource Director and, in that capacity, reports to Robyn Pollina. Richards is also in charge of payroll for both Palmer Donavin and P-D. Robert McCollow is in charge of human resources at P-D and, in that capacity, reports directly to Calhoun.

Calhoun testified that officers of P-D determine the drivers wage rate and benefit structure. According to Calhoun, Palmer Donavin's board of directors determines the wage rate and benefit structure for the warehouse employees. In that regard, Calhoun is the common denominator in both companies.

The drivers report to the facility at about 6:00 a.m., and punch in using the same time clock used by the warehouse employees. The drivers report to the dispatcher to receive their work for the day and return to the facility at the end of their work day. The driver's shift ends when they have delivered all of the materials assigned to them. The routing for each driver is set up by the night shift supervisor. The dispatcher dispatches the trucks in the morning.

The record establishes that P-D owns or leases the vehicles. The doors of the truck cabs identify P-D in small letters and Palmer Donavin in large letters. The trailers that have any wording on them at all carry the name of Palmer Donavin.

Calhoun testified that there are different employee manuals for employees of each company. Employee witnesses called by the Petitioner, one a warehouse employee paid by Palmer and one a driver paid by P-D, testified that they had both received the same handbook.⁴ No documentary evidence was entered into the record to establish the existence of another employee handbook. Calhoun testified that the handbooks are formulated by management at

⁴ Petitioner's Exhibit 1.

each company and, therefore, some of the same people would be involved in formulating both handbooks.

Calhoun testified that there are different work rules regarding working hours and drug tests. According to Calhoun, Palmer Donavin employees are subjected to a 10 panel drug test while P-D employees are subjected to an 8 panel drug test. Calhoun explained that the tests are different because of Department of Transportation regulations. The employees of each company are under different worker's compensation plans

Both companies utilize the same in-house payroll system. Employees of both companies have the same health and life insurance plans and the same holidays. Evidence revealed that joint meetings have been held for employees of both companies to discuss changes in insurance plans or providers. Vacations for employees of both companies are based on the same formula using years of service. Employees of both companies are offered the same profit sharing and 10(k) plans. Employees of both companies wear uniform shirts with "Palmer Donavin" written on them. It appears that warehouse employees are paid by checks from P-D while drivers are paid by check from Palmer Donavin. However, all employees receive their checks the same day. Dierienger passes out the checks to all employees. Joyce Dierienger performs clerical services for both warehouse employees and drivers.

The record establishes that drivers and warehouse employees occasionally fill in for each other. Indeed, one Petitioner witness testified that he was hired as a "backup driver/warehouseman" and initially performed both duties. When drivers fill in in the warehouse, they pull orders and help to keep the areas clean. It appears that drivers most often perform work in the warehouse during the winter months when work is slow. During that time period, the drivers may work in the warehouse as often as once each week. A warehouse employee called by the Petitioner testified that one driver has been working in the warehouse 4 to 5 times a week. On occasion, warehouseman have filled in for drivers using equipment that does not require a commercial drivers license.

Based on the foregoing and the record as a whole, I find that Palmer Donavin and P-D are a single employer and that the petitioned for unit is appropriate.

It is well established that in determining whether two entities constitute a single employer, the Board considers the following factors: common ownership; interrelation of operations; common management and centralized control of labor relations. Not all of the foregoing factors must be present, but a significant factor is the absence of an "arm's length relationship found among unintegrated companies" **Denart Coal Co., Inc., 315 NLRB 850, 851 (1994), enf. 64 F3d. 661 (4th Cir. 1995)**⁵

In the instant matter, P-D is a wholly owned subsidiary of Palmer Donavin, therefore the Employer's share common ownership. The record establishes that the operations are completely integrated; there is common management and centralized control of labor relations. There is a substantial identity between the officers of the two employers. Ron Calhoun, Robyn Pollina, and Robert McCollow hold positions of authority for both Employers. Calhoun is involved in determining wage rates and benefit structures for employees of both companies. It appears that the Employers issue a single employee handbook for employees of both companies. Even if Calhoun is correct and there are two separate handbooks, he admits that many of the same individuals are involved in compiling the handbooks.

Matt Dierienger, an employee of Palmer Donavin hires, fires and supervises all of the employees of both companies. Scott Herschberg supervises warehouse employees on the "midnight shift" and determines routes and deliveries for drivers. P-D has one business purpose, to deliver products to Palmer Donavin customers. Employees of both companies have the same health and life insurance plans and the same holidays. Employees of both companies are offered the same profit sharing and 10(k) plans. Both companies use the same in-house payroll system. Sean Richards is the director of human resources at Palmer Donavin and is in charge of payroll

for both companies. There is substantial interchange between the drivers and warehouseman. There is no evidence that drivers who perform warehouse work are paid by Palmer-Donavin for that work. Likewise, there is no evidence that warehousemen who drive trucks on occasion are paid by P-D for that work.

The record clearly establishes that the two Employers constitute one integrated operation. There is no evidence of an arm's length relationship between the two companies. I find therefore, that the Employers constitute a single employer.⁶

As noted above, the Petitioner seeks to represent the Employer's warehouse employees and drivers in a single unit. In determining whether a petitioned-for unit is appropriate the Board first considers the union's petition and whether the unit sought is appropriate. **Overnite Transportation Company**, 322 NLRB 723 (1996); **P.J. Dick Contracting, Inc.**, 290 NLRB 150, 151 (1988). Thus, the unit sought by the petitioner is always a relevant consideration. **E.H. Koester Bakery & Co., Inc.**, 136 NLRB 1006 (1962). The Board's longstanding policy is that the petitioned-for unit need only be an appropriate unit for collective bargaining, not the optimum or most appropriate unit. **Overnite Transportation**, *supra*; **Morand Brothers Beverage Co.**, 91 NLRB 409, 418 (1950).

The record clearly supports a finding that the petitioned for unit is an appropriate one. The warehousemen and drivers share a community of interest sufficient to warrant their inclusion in the same unit. The warehousemen and driver share common supervision, have the same health and life insurance plans and enjoy the same holidays. They participate in the same

⁵ See also: **Mercy General Health Partners Amicare Homecare and Mercy Healthcare at Home**, 331 NLRB No.93 (July 17, 2000); **Alexander Bistrizky**, 323 NLRB 524 (1997)

⁶ Having found that the entities at issue constitute a single employer, I need not specifically address the Employer's argument regarding the need for joint employers to consent to be bound to a single unit for the purposes of collective bargaining. Clearly, the Employers also satisfy the lower standard set for the determination of joint employer status. Thus, even if the Employers were found only to be joint employers the Board no longer requires the consent of such employers before their employees may be included in a single appropriate unit. **M.B. Sturgis, Inc. and Jeffboat Division, American Commercial Marine Service Company**, 331 NLRB No. 173 (August 25, 2000)

profit sharing and 401(k) plans. In addition, the drivers and warehouse employees fill in for each other. Under these circumstances, a unit of warehouse employees and drivers is an appropriate unit. **Marks Oxygen Co., 147 NLRB 228 (1964).**

I shall, therefore, direct an election in the petitioned-for unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Teamsters, Local 377, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by December 10, 2001.

Dated at Cleveland, Ohio this 26th day of November 2001.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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